

RESULT 3
 BSUB0002 202768 bp DNA linear BCT 07-JUL-2003
 LOCUS Bacillus subtilis complete genome (section 2 of 21): from 213031 to 415798.
 DEFINITION
 ACCESSION 239105 AL009126
 VERSION 239105.2 GI:32466890
 KEYWORDS
 ORGANISM
 SOURCE
 REFERENCE
 AUTHORS
 Kunst, F., Ogasawara, N., Moszer, I., Albertini, A.M., Alloni, G., Azevedo, V., Bertolo, M.G., Bessières, P., Bolotin, A., Borchert, S., Boriss, R., Boursier, L., Brans, A., Braun, M., Brignell, S.C., Bron, S., Brouillet, S., Bruschi, C.V., Caldwell, B., Capuano, V., Carter, N.M., Choi, S.K., Codani, J.U., Conerton, I.F., Cummings, N.J., Daniel, R.A., Denizot, F., Devigne, K.M., Dusterhoft, A., Ehrlich, S.D., Emerson, P.T., Entian, K.D., Errington, J., Fabret, C., Ferrari, E., Foulger, D., Fritze, C., Fujita, M., Fujita, Y., Fuma, S., Galizzi, A., Galleron, N., Ghim, S.Y., Glaeser, P., Goffeau, A., Golightly, E.J., Grandi, G., Guisepi, G., Guy, B.J., Haga, K., Haisch, J., Harwood, C.R., Henaut, A., Hilbert, H., Holsappel, S., Hosono, S., Hult, M.F., Itaya, M., Jones, L., Joris, B., Karamata, D., Kasahara, Y., Klaerr-Blanchard, M., Klein, C., Kobayashi, Y., Koester, P., Koningsstein, G., Krogh, S., Kumano, M., Kurita, K., Lapidus, A., Lardinois, S., Lauber, J., Lazarevic, V., Lee, S.M., Levine, A., Liu, H., Masuda, S., Mauel, C., Médigue, C., Medina, N., Mellado, R.P., Mizuno, M., Moestl, D., Nakai, S., Noback, M., Noone, D., O'Reilly, M., Ogawa, K., Ogiwara, A., Oudega, B., Park, S.H., Prescott, A.M., Prescott, E., Pujic, P., Purnelle, B., Rapoport, G., Rey, M., Reynolds, S., Rieger, M., Rivolet, C., Rocha, E., Roche, B., Rose, M., Sadie, Y., Sato, T., Scanlan, E., Schleich, S., Schroeter, R., Scofield, P., Sekiguchi, J., Sekowska, A., Serot, S.J., Serron, P., Shin, B.S., Soldo, B., Sorokin, A., Taccout, B., Takagi, T., Takahashi, H., Takemaru, K., Takeuchi, M., Yamakoshi, A., Tanaka, T., Terpe, P., Tognoni, A., Tosato, V., Uchiyama, S., Vandenbol, M., Vannier, F., Vassarotti, A., Viari, A., Wambut, R., Wedler, E., Wedler, H., Wetzenecker, T., Wintere, P., Wipat, A., Yamamoto, H., Yamane, K., Yasunoto, K., Yata, K., Yoshida, K., Yoshikawa, H.F., Zumbstein, E., Yoshikawa, H. and Danchin, A.

TITLE
 The complete genome sequence of the gram-positive bacterium Bacillus subtilis
 JOURNAL
 NATURE 390 (1997), 249-256 (1997)
 MEDLINE
 9384377
 PUBMED
 9384377
 2 (bases 1 to 202768)
 REFERENCE
 Kunst, F., Ogasawara, N., Yoshikawa, H. and Danchin, A.
 TITLE
 Direct Submission
 JOURNAL
 Submitted (27-JUN-2003) I. Moszer, A. Danchin, Institut Pasteur, Genetique des Genomes Bacteriens, 28 rue du Docteur Roux, 75724 Paris Cedex 15, FRANCE. E-mail: moszer@pasteur.fr, adanchin@pasteur.fr Phone: +33 (0)1 45 68 84 41, Fax: +33 (0)1 45 68 89 48

COMMENT
 On Jul 7, 2003 this sequence version replaced gi:2632457.
 This entry contains data from release R16.1 of the Subtilist database. Further data on gene annotation and detailed information about changes from previous releases can be found at <http://genolist.pasteur.fr/Subtilist/>.

FEATURES
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pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

The disclosure is objected to because of the following informalities: on Page 5, Line 23, the applicant refers to "the flashlight pen 1 also has a circular conductive member..." This application is being reviewed as if the reference to the "flashlight pen 1" was actually intended to be "base 70 also has a circular conductive member..." Appropriate correction is required.

Claim Objections

Claims 3 and 9 are objected to because of the following informalities: the phrase "preferably" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. Appropriate correction is required.

Claim 10 is objected to because of the following informalities: the phrase "said base is in the shape of a cake" can be interpreted to be in many forms such as round, rectangular, hemispherical, etc. This application is being reviewed as if the "shape of a cake" is intended to be round with flat surfaces on the top and the bottom.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 9 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrase "said decorative member" is referred to as both "candle-shaped" and later

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“torch-shaped.” The applicant fails to distinguish whether he wants the decorative member to “candle-shaped” or “torch-shaped” rendering the claim indefinite. For examination purposes, the first instance of the word “and” in Claim 9, Line 3 will be treated as an “or.”

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kim (US Patent 6,585,388) in view of Wang (US Patent 6,299,372).

With respect to claim 1, Kim teaches the claimed pen (Figure 1.1) comprising a hollow penholder (the barrel, Figure 1.40) with a space accommodating a refill (ink cartridge, Figure 2.30) and the refill being protruded from a tip (tip hole, Figure 3.41) of the penholder, a cap (stick, Figure 2.21) hollow at one end and coupled to another end of the cap (barrel thread, Figure 2.42), a decorative member (decorative figurine, Figure 1.2) coupled to the other end of the cap, a flashlight device (LED assembly, Figure 2.11) disposed in the cap which emits light through the decorative member, a pen clip (Figure 1), and a switch (push button, Figure 1.10) for turning on and off the flashlight device. However, Kim fails to teach the cap having at least one decorative strip. Wang teaches that it is well known to design the surface of a pen with a decoration (Figure 4.21) such as an advertising pattern (Column 2, Line 35) or decorative strips. It would have been obvious to one of ordinary skill in the art at the time the invention was made

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to modify the Kim pen with that of Wang because decorative strips are aesthetically appealing and can be used as a marketing or advertising tool.

With respect to claims 2-3, Kim teaches a pen clip which is coupled to a position between the decorative member and the cap, a candle-shaped (cylindrical) pen, and a decorative member (decorative figurine) made of transparent material. However, Kim does not teach the pen clip, the pen, or the decorative member being sprayed with a red paint. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Kim pen by spraying a red paint because such modifications are aesthetically pleasing to the consumer and applying color to the invention does not alter the function of the device, but merely changes the appearance.

With respect to claim 4, Kim teaches a light-emitting device (Figure 1.11) containing an LED (Figure 1.12) and battery (Figure 1.14). However Kim does not teach the emitting light to be a blinking light. Wang teaches a circuit board (Figure 4.311) which enables and disables the LED and its colors. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Kim with Wang because a circuit board is used to control the light-emitting device and therefore allow for a blinking light to more easily attract the attention of the user.

With respect to claim 5, Kim teaches the invention set forth above wherein the switch is defined as a push button (Column 3, Line 12).

Claims 6-8 and 10-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kim in view of Wang as applied to claims 1-5 above, and further in view of Berman (US Patent 4,699,536).

With respect to claim 6, Kim in view of Wang teaches the invention set forth above except for a base with a guide channel for the pen. Berman teaches a base (penholder, Figure 1.14) that allows the insertion of the pen in a guide channel (pen retaining portion, Figure 1.34) while the cap portion is exposed. It would have been obvious for one of ordinary skill in the art at the time of the invention to modify Kim in view of Wang with Berman because the addition of a base allows for a convenient location to store the pen.

With respect to claim 7, Kim teaches a penholder hollow on both ends with an accommodating space for a refill which can protrude from the penholder tip. Kim also teaches a cap that is hollow on one end, has an accommodating space for the flashlight device, and is coupled to the penholder.

With respect to claim 8, Kim teaches a pen clip coupled between the decorative member and the cap. However, Kim does not teach the pen clip being sprayed with a red paint. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Kim pen by spraying a red paint because such modifications are aesthetically pleasing to the consumer and applying color to the invention does not alter the function of the device, but merely changes the appearance.

With respect to claim 10, Berman teaches the base being round with a flat top and a flat bottom surface (Figures 1.26b and 2.26a).

With respect to claim 11, Kim teaches the invention set forth above wherein the switch is a press button, the flashlight device comprises an LED and a battery and is disposed of in the cap. However Kim does not teach the emitting light to be a blinking light. Wang teaches a circuit board (Figure 4.311) which enables and disables the LED and its colors. It would have

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been obvious to one of ordinary skill in the art at the time of the invention to modify Kim with Wang because a circuit board is used to control the light-emitting device and therefore allow for a blinking light to more easily attract the attention of the user.

Claims 9 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kim in view of Wang and Berman as applied to claims 6-8 and 10-11 above, and further in view of Hitzelberger (US Patent 1,205,628).

With respect to claim 9, Kim in view of Wang and Berman teaches the invention set forth above except for the decorative member being "candle-shaped" or "torch-shaped." Hitzelberger teaches a portable electric light that "has the general appearance of a candle-stick holding a candle" (Column 1, Lines 54-55, shown in Figure 1). It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the invention with Hitzelberger because a candle design gives the invention the appeal of being a real, lit candle without the fear of injury or the hazard of having a real flame.

With respect to claim 12, Kim in view of Wang and Berman teaches the invention set forth above except the switch being a contact-type switch and the base comprising a circular conductive member and battery. Hitzelberger teaches a circular conductive member (cylindrical lamp receiving socket, Figure 1.3) and a battery (Figure 1.5) wherein the circular conductive member is disposed in the guide channel and is coupled to the battery. It would have been obvious to one of ordinary skill in the art to modify the Kim in view of Wang and Berman with Hitzelberger because using this type of connection provides quick and easy connection and disconnection as evidenced by its common use with light bulbs found in ordinary circumstances in homes and offices.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sandra O'Shea at (571) 272-2378. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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Technology Center 2800